

AGREEMENT
between the
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

PURPOSE AND JURISDICTION

1. This Agreement is entered into by the Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission, and renamed effective September 1, 2003) and the United States Environmental Protection Agency Office of Civil Rights. This Agreement resolves certain issues raised in complaints (noted below in Paragraph 5) filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7.
2. Title VI of the Civil Rights Act of 1964 prohibits agencies and other entities that receive Federal financial assistance from conducting their programs or activities in a manner that discriminates on the basis of race, color, or national origin. The TCEQ is a recipient of Federal financial assistance from the U.S. EPA and is subject to the provisions of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.
3. The TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7. The activities detailed in Paragraph 8 of this Agreement, which TCEQ has voluntarily agreed to undertake and implement, are in furtherance of this commitment. The Executive Director and Director of the Office of Public Assistance, in their capacity as officials of TCEQ, have the authority to enter into this agreement for purposes of carrying out the activities listed in the following paragraphs.
4. This Agreement is entered into pursuant to the authority granted the U.S. EPA, under Title VI and U.S. EPA regulations at 40 C.F.R. Part 7, to investigate administrative complaints alleging discrimination in the provision of services by recipients of Federal financial assistance from U.S. EPA, and to seek to resolve such complaints using voluntary, nonadversarial means. As provided in Paragraphs 9 and 10, this Agreement does not constitute an admission by TCEQ nor a finding by U.S. EPA of any violation(s) of Title VI or 40 C.F.R. Part 7.

BACKGROUND

5. Since 1994, a number of complaints have been filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations at 40 C.F.R. Part 7 by TCEQ and its predecessor agencies in the administration of its permitting and public participation program:

- File No. 2R-94-R6 (filed by (b) (6) Personal Privacy), No. 3R-94-R6 (filed by the Garden Valley Neighborhood Association), No. 2R-95-R6 (filed by People Against Contaminated Environments), and No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al.), alleging discrimination from the failure of TCEQ and its predecessor agencies to take multiple sources and/or pollutants into account in permitting;
- File No. 2R-95-R6 (filed by People Against Contaminated Environments) alleging discrimination from the failure by TCEQ and its predecessor agencies to conduct public outreach, inform the public of hazards, or otherwise enable communities to meaningfully participate in the permitting process;
- File No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al.) and No. 1R-00-R6 (filed by People Against Contaminated Environments), alleging discrimination by TCEQ and its predecessor agencies by denying communities affected by a permitting action of the opportunity to raise concerns during the permitting process (through the use of “standard exemptions” or denying the opportunity for a hearing);
- File No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al.), alleging discrimination by TCEQ and its predecessor agencies by failing to provide for meaningful public participation as the result of approving contested permits while an appeal for public information is pending; and
- File No. 5R-94-R6 (filed by Mothers Organized to Stop Environmental Sins), alleging discrimination by TCEQ and its predecessor agencies by not responding to or using citizen-generated evidence of violations in enforcement.

6. Numerous changes, modifications and amendments to the laws, regulations and policies governing TCEQ’s permitting and public participation program have been implemented since 1994 that are intended to or have the effect of enhancing the effectiveness of TCEQ’s permitting and public participation program, including (but not limited to) measures that increase the availability of public information and provide for public outreach, that encourage public participation in the permitting process, and that identify and respond to community concerns. In addition, legislation passed by the Texas Legislature has required or authorized numerous other changes, modifications and amendments, including (but not limited to) measures that likewise have the purpose or effect of enhancing TCEQ’s permitting and public participation program, and which provide new authority for TCEQ to take into account the impacts or risks on communities from multiple sources or multiple pollutants, and to respond to community-identified noncompliance by facilities. Several of these new authorities and programs have already been implemented, are currently being implemented, or will be implemented in the future. Several of these changes have addressed or will address, at least in part, issues identified in Paragraph 5.

7. In response to the Title VI complaints accepted for investigation between 1994 and 2001 and listed in Paragraph 5, the U.S. EPA has undertaken an investigation of the TCEQ's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7. This Agreement between EPA and TCEQ has been entered into prior to any finding of violation from that investigation, and addresses allegations of discrimination resulting from cumulative impacts, public outreach and participation practices, citizen collected evidence, and impacts from the use of permitting procedures that deny notice and an opportunity to raise concerns in permitting.¹

SPECIFIC COMMITMENTS

8. The TCEQ agrees to undertake the following specific commitments:

A. Not later than 270 days from the effective date of this Agreement, TCEQ agrees to enter into a Memorandum of Agreement with the U.S. EPA, Region VI, to collaborate and jointly share information relating to the further study and consideration of cumulative impacts in areas including but not limited to permitting activities, rules, and policies of both agencies. The EPA and TCEQ agree to coordinate, where appropriate, on research and data collecting activities relating to the study of cumulative risks.

B. Within 3 years of the effective date of this Agreement, TCEQ agrees to undertake an assessment of TCEQ's public participation program in permitting, to include but not be limited to:

(i) its outreach and public education/awareness activities (including the methods of notifying the public of permitting activities, and of the citizen and community assistance resources provided by or through TCEQ);

(ii) specific measures or activities undertaken to provide for public awareness and notice of, and impacts from, TCEQ permitted or authorized activities by permitted entities (including, but not limited to, use of permits-by-rule);

(iii) an evaluation of TCEQ's response to concerns raised in comments by members of the public during facility permitting; and

(iv) to identify and take appropriate steps to implement potential revisions, as necessary, to address issues or aspects of TCEQ's program for which a change or modification is appropriate.

¹ This Agreement does not address other allegations raised in complaints Nos. 3R-94-R6 and 1R-00-R6 (failure to enforce), and Nos. 5R-94-R6 and 2R-95-R6 (adverse health impacts from facility emissions), which are investigated separately.

C. Within 1 year of the effective date of the agreement, TCEQ agrees to initiate an assessment and evaluation of the protectiveness of air quality permit-by-rules that require registration, including any necessary revisions and modifications.

D. Not later than 180 days from the effective date of this Agreement, TCEQ agrees to initiate a process to assess the citizen collected evidence program implemented by TCEQ in January, 2002, including tracking complaints received in conjunction with citizen collected evidence, whether the evidence was collected according to the TCEQ protocols, and the number of enforcement actions initiated as a result of citizen collected evidence; and to notify EPA describing the implementation of this process.

E. TCEQ agrees to provide a copy of the completed assessment, evaluation and/or report (as applicable) described in Paragraphs 8.B, 8.C and 8.D, by certified mail to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by TCEQ of each.

EFFECT OF AGREEMENT

9. It is understood that this Agreement does not constitute an admission by TCEQ or a finding by the U.S. Environmental Protection Agency of violations of 40 C.F.R. Part 7 regarding the permitting and public participation matters raised in File No. 2R-94-R6, No. 3R-94-R6, No. 5R-94-R6, No. 2R-95-R6, No. 1R-96-R6 and No. 1R-00-R6 described in Paragraph 5.

10. In consideration of TCEQ's implementation of, and adherence to, the provisions of this Agreement described in Paragraph 8, the U.S. EPA Office of Civil Rights will not continue any further proceedings with respect to the permitting and public participation matters referred to in Paragraph 5.

A. If the Office of Civil Rights determines that TCEQ has not satisfied a term or condition of this Agreement, or that a material change to TCEQ's programs or authorities affects TCEQ's compliance with Title VI and 40 C.F.R. Part 7, the Office of Civil Rights shall promptly notify TCEQ of that determination in writing.

B. The notification under Paragraph 10.A shall include a statement of the facts and circumstances upon which the Office of Civil Rights has relied in making its determination, and the Office of Civil Rights shall provide an opportunity to resolve any disputed issue(s) by informal means.

C. With respect to any assessment, evaluation and/or report (as applicable) described in Paragraphs 8.B, 8.C or 8.D that has been submitted by TCEQ pursuant to Paragraph 8.E, if the Office of Civil Rights determines that the submission does not satisfy the requirements of Paragraph 8.B, 8.C or 8.D (as applicable), EPA shall provide the written notification required by Paragraphs 10.A and 10.B within 90 days of EPA's receipt of the submission. If notification under Paragraph 10.A is not provided by

EPA within 90 days of EPA's receipt of the final submission required by Paragraph 8.B, the Agreement shall be considered completed as provided in Paragraph 12; by written notice to TCEQ, EPA may obtain an additional 90 days in which to provide the notification under Paragraph 10.A for the final submission required by Paragraph 8.B.

D. If compliance cannot be assured by informal means, EPA may use any other means authorized by law, including termination of this Agreement. Except as expressly provided in this Agreement, EPA retains all rights and authorities to ensure compliance with Title VI of the Civil Rights Act and 40 C.F.R. Part 7, nor is there any waiver, express or implied, of EPA's right to enforce any provision of this Agreement.

11. If either party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to TCEQ's program or authorities, or due to satisfaction or performance of obligations required by this Agreement, or for other good cause, the party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification, and the substance of the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by TCEQ and the Office of Civil Rights.

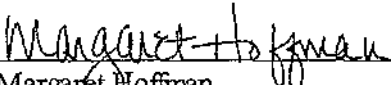
12. This Agreement constitutes the entire Agreement between TCEQ and the Office of Civil Rights regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by TCEQ and the U.S. EPA Office of Civil Rights in accordance with the provisions of Paragraph 11. This Agreement shall remain in effect until each of the commitments in Paragraph 8 are completed.

13. This Agreement does not affect TCEQ's continuing responsibility to comply with Title VI of the Civil Rights Act of 1964, nor does it affect U.S. EPA's investigation of any allegations in Title VI complaints other than those listed in Paragraph 5, or address any matter not specifically covered by the terms of this Agreement.

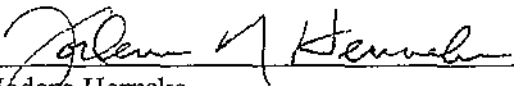
14. This Agreement is a public document. A copy of this Agreement and any information contained in it may be made available to any person by TCEQ or the Office of Civil Rights on request under the Freedom of Information Act or otherwise.

15. The effective date of this Agreement is the date on which EPA's Investigation Report and Decision dismissing the complaints identified in Paragraph 5 is issued; provided that the Investigation Report and Decision is issued within 60 days of the date of the last signature below. If the Investigation Report and Decision is not issued within the prescribed time period, this Agreement is null and void.

On behalf of the Texas Commission on Environmental Quality,

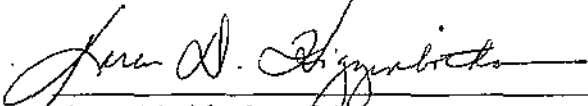

Margaret Hoffman,
Executive Director

30 May 2003
Date


Jodena Herneke,
Director, Office of Public Assistance

30 May 2003
Date

On behalf of the U.S. Environmental Protection Agency,


Karen Higginbotham, Director
Office of Civil Rights

12 June 2003
Date